

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 22 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RICHARD BRUBAKER,

Petitioner/Appellant,

v.

CITY OF TUCSON, a municipal
entity, and STATE OF ARIZONA,

Respondents/Appellees.

2 CA-CV 2010-0180

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20104230

Honorable Jane L. Eikleberry, Judge

AFFIRMED

Risner & Graham

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Tucson

Attorneys for Petitioner/Appellant

Michael G. Rankin, Tucson City Attorney

By Laura Brynwood and Vinicio R. D'arquea

Tucson

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H O W A R D, Chief Judge.

¶1 Appellant Richard Brubaker challenges the superior court’s dismissal of his special action contesting the city court’s judgment against him. On appeal, he argues several errors relating to the hearing in the city court and the superior court’s review of that hearing. For the following reasons, we affirm.

Factual and Procedural Background

¶2 “When reviewing the superior court’s denial of relief in a special action, we view the facts in the light most favorable to sustaining the court’s ruling.” *Hornbeck v. Lusk*, 217 Ariz. 581, ¶ 2, 177 P.3d 323, 324 (App. 2008). While executing a search warrant at Brubaker’s home, police found several cats and dogs in cages in unsanitary conditions. Pima County Animal Control was called, and the majority of the animals were seized. Following a hearing, the Tucson City Court ordered the animals forfeited. Brubaker brought a special action before Pima County Superior Court, which found Brubaker had failed to perfect his special action properly by filing the required bond and upheld the city court. This appeal followed.

Discussion

¶3 The state argues that Brubaker’s failure to pay the required bond was a failure to perfect his special action in the superior court. We review a superior court’s ruling in a special action for an abuse of discretion. *Hormel v. Maricopa County*, 224 Ariz. 454, ¶ 16, 232 P.3d 768, 772 (App. 2010).

¶4 Tucson City Code § 4-11(k) provides that, in cases regarding animal forfeiture, “[t]he owner must post a bond equivalent to sixty (60) days of impoundment

costs in order to perfect the owner's appeal.”¹ As required by § 4-11(k), Brubaker was notified of the requirement to post a bond in the amount of \$53,130. He did not do so, instead arguing that the bond he had posted prior to the city court hearing was sufficient to perfect his special action.² However, the Tucson City Code requires two separate bonds—one prior to the proceedings in the city court and another to perfect the special action. § 4-11(h), (k). Consequently, Brubaker's failure to file the second required bond resulted in an unperfected special action. *See* § 4-11(k). Thus, the superior court was not required to reach the merits of Brubaker's special action and did not abuse its discretion by dismissing it. *Cf.* Ariz. Super. Ct. R. App. P.–Civ. 9(b) (failure to perfect appeal results in dismissal).

¹Section 4-11(k) states that “[a]n appeal . . . shall be by way of special action.” Given this statement, we interpret the code's use of the word “appeal” later in the subsection to refer to the special action brought by the party challenging the city court's ruling.

²Brubaker also contends the requirement he post a bond of \$53,130 in order to petition for special action violated his right to due process. However, he cites no authority supporting this argument and fails to explain properly any alleged due process violation. Consequently, the argument is waived. *See* Ariz. R. Civ. App. P. 13(a)(6) (“An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.”); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (appellant's failure to develop and support argument waives issue on appeal).

Conclusion

¶5 In light of the foregoing, we affirm the superior court's ruling and deny Brubaker's request for attorney fees.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge